



SENATE BILL 773: Implement GSC Recommendations

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Sen. Hartsell
Analysis of: PCS to First Edition
S773-CSMN-11

Date: June 26, 2014
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To: Senate Judiciary I Committee
From: General Statutes Commission
Re: SB 773 (Implement GSC Recommendations)
Date: June 25, 2014

General Comments

The proposed committee substitute for this bill consists of four parts. Part I modifies provisions for survivorship in joint tenancy property under Article 3 of Chapter 31A of the General Statutes, which has the goal of preventing a slayer (a person who has willfully and unlawfully killed another person) from profiting by his or her own wrong. Part II clarifies provisions for filing certified copies of probated wills in a county where devised real property is located when the will is probated in a different county. Part III deletes the statutory forms for judgment debtors claiming personal and real property exemptions under G.S. 1C-1601 and directs the Administrative Office of the Courts to continue to provide forms for that purpose. Part IV provides an effective date provision.

Specific Comments

Part I amends G.S. 31A-6, which provides for the disposition of property held in a joint tenancy with right of survivorship where the slayer and the victim are joint tenants. The purpose is to deal with an issue with respect to G.S. 31A-6(b) caused by the ability to hold unequal shares in a joint tenancy with right of survivorship.

Current G.S. 31A-6(a) provides that where the slayer and the victim are the only joint tenants, the victim's share passes immediately at the victim's death to the victim's estate; at the slayer's death, the slayer's share also passes to the victim's estate. Under current G.S. 31A-6(b), where three or more persons, including the slayer and the victim, are joint tenants, only the portion of the victim's share that would have accrued to the slayer passes to the victim's estate, and the remainder passes to the other joint tenants. At the death of the next joint tenant, that person's share passes normally to the surviving joint tenants, so that if the slayer is a survivor, the slayer takes his or her portion. If the slayer becomes the final survivor, one-half of the slayer's share (which at that point would include the shares that passed to the slayer from the other joint tenants) passes immediately to the victim's estate, with the remainder passing to the victim's estate at the slayer's death.

The disposition provided for in G.S. 31A-6(b) served its intended purposes as long as shares held in a joint tenancy with right of survivorship were required to be equal shares. The slayer never effectively holds more than one-half of the property, which is the most the slayer would ever have been entitled to take if the victim had survived. Shares in a joint tenancy are no longer required to be equal, however.

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Senate PCS 773

Page 2

Now, if the victim holds an extremely large portion of the property and the slayer is the last survivor, the slayer could end up with a much greater share of the property under G.S. 31A-6(b) than the slayer would have had if the victim had survived, while during the slayer's lifetime, the victim's estate would hold a smaller share than the victim's original share. The amendments in this Part are intended to address this situation.

Section 1.1 amends G.S. 31A-6 in subsection (a) to make formatting, gender neutral, and other style changes. Holding unequal shares in a joint tenancy does not affect the disposition provided for in subsection (a), and no substantive changes are intended by these amendments.

Because the last sentences of subsection (a) and subsection (b) are identical, Section 1.1 moves them to a new subsection (c) without substantive change.

Section 1.1 amends subsection (b) to change the treatment of property where three or more persons, including the slayer and the victim, hold the property as joint tenants with right of survivorship. The slaying of one joint tenant by another is treated as a severance of the joint tenancy as to the victim. Under subdivision (b)(1), the victim's entire share is converted at the victim's death to a share held in a tenancy in common and passes to the victim's estate. Under subdivision (b)(2), the remaining persons, including the slayer, continue to hold their shares as joint tenants with right of survivorship. Under subdivision (b)(3), if the slayer becomes the final survivor, the slayer's share (which includes the other shares that passed to the slayer as final survivor) passes to the victim's estate upon the slayer's death.

The following examples illustrate the application of G.S. 31A-6(b) as it currently exists and as amended by this bill:

EXAMPLE I (current law): A, B, and C own Blackacre as joint tenants with right of survivorship in the respective proportions of 10%, 10%, and 80%. A slays C. Under current G.S. 31A-6(b), A's 10% share remains the same, B's share increases from 10% to 50% (10% plus one-half of 80%), and C's estate receives 40% (the other one-half of 80% that A would normally have taken). If B survives A (the slayer), B's share increases to 60% as the final survivor and passes to B's heirs upon B's death. However, if A becomes the final survivor, (i) A's share increases to 60%, one-half of which passes immediately to C's estate, (ii) A is left with a lifetime right to the remaining 30% share, which passes to C's estate on A's death, and (iii) C's estate holds only a 70% share for A's lifetime, less than C's original 80% share.

EXAMPLE II (as amended): Under the facts of the previous example, C's 80% share would pass to C's estate, and A and B would continue to hold their 10% shares as joint tenants with right of survivorship. If A (the slayer) becomes the final survivor, A's 20% share would be held by A for life and, upon A's death, would pass to C's estate.

New subsection (d) clarifies that the right to partition property or sever the joint tenancy is not affected by a slaying of one cotenant by another and that any share of the property taken by the slayer by reason of the partition or severance is subject to the provisions of subdivision (b)(3). Subsection (d) is not intended to be a change from current law.

Section 1.2 provides that the amendments become effective October 1, 2014, and apply to property subject to Article 3 of Chapter 31A of the General Statutes as to decedents dying on or after that date.

Senate PCS 773

Page 3

Part II clarifies the provisions specifying the probate documents that must be filed in a county where devised real property is located when the will is probated in a different county. Essentially, **Sections 2.1 and 2.2** amend G.S. 28A-2A-13 and G.S. 31-39(c), respectively, to specify that the required documents are (i) a certified copy of the probated will and (ii) a certified copy of the certificate of probate of the will.

Section 2.1 also amends G.S. 28A-2A-13 to make formatting and other style changes and to provide that the filing of the probated will in the county where the real property is located has the same effect for purposes of G.S. 31-39(c) as to the priorities of claims against the real property located in that county as if the will had originally been probated there. The reference to the "book of wills" is eliminated because the General Statutes Commission is informed that clerks of superior court no longer maintain books of wills but instead file certified copies of the probated wills in estate files set up for the decedents.

Section 2.3 provides that the amendments become effective October 1, 2014, and apply to estates of decedents dying before, on, or after that date.

Part III deletes the two statutory forms set out in G.S. 1C-1603 as no longer needed because the Administrative Office of the Courts (AOC) provides forms for the same purpose. The first of these forms is a notice to judgment debtors from the court; the second form is a schedule that judgment debtors must use to list assets in which they want to claim exemptions, combined with a request to have those assets or a specified value in them declared exempt. The amendments in this Part replace the forms with a requirement that the AOC provide forms, which, as noted, it already does.

Currently, G.S. 1C-1601 sets out a list of property or interests in property that a judgment debtor may claim as exempt from the claims of judgment creditors. G.S. 1C-1603 contains the procedure by which a judgment debtor may claim exemptions, including the two forms already described. It has happened more than once that legislation amending the substantive provisions in G.S. 1C-1601 has failed to make conforming changes to the schedule in G.S. 1C-1603. The result is a time lag where a mismatch exists between the substantive law on what may be claimed as exempt and the statutory form the judgment debtor is supposed to use to claim these exemptions. After the most recent of these instances, the General Statutes Commission was reviewing the schedule in G.S. 1C-1603 to recommend conforming corrections when it learned that the AOC already has forms for both the schedule of claimed exemptions (AOC-CV-415) and the notice the court is supposed to send (AOC-CV-406). These forms differ somewhat from the statutory forms, but they appear to be reasonable forms. The Commission is informed that the AOC's forms are widely used. In addition, the AOC's forms committee has the flexibility to alter its forms more quickly than the General Assembly can enact "catch up" legislation.

Section 3.1 amends G.S. 1C-1603 to:

- Strike the statutory form for the notice to judgment debtors from the court under G.S. 1C-1603(a)(4) and replace it with a new subdivision (a)(5) requiring the AOC to provide a form containing expressly listed information. The required information in this new list is derived from the current statutory notice and the AOC's own notice form.
- Delete as unnecessary the requirement in G.S. 1C-1603(c)(2) to include in the schedule a list of all the judgment debtor's debts and the names and addresses of all of the debtor's creditors.
- Strike the schedule in G.S. 1C-1603(c) for listing assets as to which exemptions are claimed and replace it with a new subsection (c1) directing the AOC to provide a form.

Section 3.1 also makes stylistic updates to G.S. 1C-1603.

Senate PCS 773

Page 4

Section 3.2 provides that Part III becomes effective October 1, 2014, and does not affect any debtor's statements issued before that date.

Part IV provides that, except as otherwise provided, the act is effective when it becomes law.